

**HIGH COURT OF SINDH, CIRCUIT COURT AT
HYDERABAD**

C.P No.S-812 of 2021

[MST. UZMA VERSUS FAHEEM AHMED & OTHERS]

DATE	ORDER WITH SIGNATURE OF JUDGE
Petitioner:	Through Mr. Nouman Sahito advocate
Respondent 1:	None present
The State:	Through Mr. Ayaz Ali Rajper, AAG
Dates of hearing:	06.06.2022
Date of Decision:	06.06.2022

ORDER

MUHAMMAD FAISAL KAMAL ALAM J. - This petition is filed against concurrent findings of learned Family Court, vide a judgment dated 25.09.2021 followed by the decree dated 25.09.2021, which were maintained by the learned Appellate Court in Family Appeal No.102 of 2021 through judgment dated 13.12.2021. Partly claim of the Petitioner was allowed to the extent of her dower amount of Rs.50,000/- and maintenance of Idat period for three months @ Rs.4,000/- per month (Rs.12,000 total).

2. Learned counsel for the Petitioner states that learned Family Court has erroneously decided the Issue No.3 with regard to dowry articles, which are gold ornaments, and the same was maintained by the learned Appellate Court, without application of judicious mind.

3. Learned AAG states that since Petitioner has failed to prove her claim of gold ornaments, therefore, the judgment of the learned Family Court does not suffer from any illegality and the same is correctly maintained by the learned Appellate Court.

4. Heard the arguments and record perused.

5. Admittedly, as per record, the Respondent No.1 did not lead the evidence; whereas, in paragraph-10 of his written statement, he has stated that he is ready to return the dowry articles honestly to

the plaintiff (present Petitioner). In this regard learned Trial Court has appointed Bailiff to recover the dowry articles as per rules and procedure. Bailiff has submitted his Report, which is also countersigned by both the Petitioner and Respondent No.1; however, Petitioner's remarks were reflected in the receipt for handing over the dowry articles that certain gold ornaments were not handed over to the Court's Bailiff. Proper course could and should have been that if the learned Court has observed that onus to prove this claim was on Petitioner, then she should have been given ample opportunity to lead the evidence in this regard. Both the impugned decisions show that on this particular point Petitioner could not lead the evidence as required. Record is silent that whether proper opportunity was given to the Petitioner and she failed to bring plausible/tangible evidence on record in support of her claim concerning the gold ornaments. Whatever she claimed as part of the dowry articles, the findings, with due deference to both the Courts, are based on presumption that usually all the gold ornaments are in possession of the wife/lady.

6. Consequently, in view of the above, in my considered view, Petitioner should be given a proper opportunity to lead the evidence with regard to her gold ornaments only, as remaining dowry articles have been recovered and also already been handed over to the Petitioner. Resultantly, this petition is partly accepted and the case is remanded to the learned Trial Court to pass fresh decision only with regard to Issue No.3 about gold ornaments, as claimed by the Petitioner lady. Opportunity to Respondent No.1 shall also be given to lead the evidence. It is expected that decision will be given by the learned Trial Court within two months from the date of receipt of this Order. If Petitioner fails to attend the Court and lead evidence, then appropriate orders shall be passed by the learned Trial Court in accordance with law.

J U D G E